

**REMARKS**

This application has been carefully reviewed in view of the above-referenced Office Action, and reconsideration is requested in view of the following remarks.

**Regarding the Rejections**

Responsive to the new rejections, the claims have been amended so that all claims now explicitly call for determining if a physical channel is PSIP compliant, "and if not, then concluding that the physical channel is an MPEG compliant channel". The Klopfenstein reference fails to meet this claim feature in that the Klopfenstein reference successively checks to see if the channel is PSIP via acquisition of a digital PSIP guide at 210 of Fig. 3, then checks to see if the channel is analog at 225 and then checks to see if the channel is a PAT/PMT channel at 240. In Klopfenstein, the user cannot conclude that the channel is MPEG if it is not PSIP since evidently the channel might also be analog. Applicant's claim views the PSI information and determines if the channel is PSI or MPEG from that information (as has been clarified). It is noted that in Klopfenstein, as one follows the actions from 210 to 225 and 240, Klopfenstein fails to even deduce that the channel is MPEG after 225, but again conducts a test at 240.

The Office submits that the use of three tables as claimed is obvious as a result of the teachings of the Jerding reference. However, the Jerding reference says that at least five tables are used. Moreover, the undersigned is unable to identify the table divisions as claimed in Jerding or any teaching that would suggest the table arrangement claimed. Applicant claims that the first lookup table stores an attribute designating whether the incremented physical channel is a PSIP compliant channel. If the first physical channel is a PSIP compliant channel, then and only then are the other tables used to store a TSID corresponding for the physical channel in the second lookup table and a major channel corresponding to the physical channel as entries in the third lookup table. As amended, the claim further clarifies that if the selected physical channel is an MPEG compliant channel storing no additional attributes are stored in the second and third lookup tables (to paraphrase without intent of imposing additional limitations). Note that this means for an MPEG compliant channel, the tuning process can be carried out quickly for MPEG channels since only a single simple table is referenced. Jerding in combination with the other

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cited references has no teaching that would render this claim and its associated advantages obvious to one of ordinary skill in the art.

In view of the above, it is clear that multiple claimed features are not present in the cited references. For the Patent Office to combine references in an obviousness rejection, the Patent Office must first establish *prima facie* obviousness by showing where each and every element is taught or suggested in the combined references. MPEP § 2143.03. This is fundamental to an analysis under the factual inquiries required by *Graham v. John Deere*, 383 U. S. 1 (Supreme Court, 1966) as a part of identification of the scope and content of the prior art. The Patent Office has failed to do so in the present rejection. Multiple claim elements are missing from the cited references as noted above, and the Patent Office has failed to provide any articulated reasoning as to why one of ordinary skill in the art would find the claims as a whole to be obvious in the absence of the claim features not present in the cited art (See *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006), as explicitly endorsed by the Supreme Court). Such an analysis is required in order to satisfy the factual inquiry ascertaining the differences between the prior art and the claims at issue. Accordingly, it is submitted that the claims as amended are patentable. Reconsideration and allowance are respectfully requested at an early date.

#### **Concluding Remarks**

The undersigned additionally notes that other distinctions exist between the cited art and the claims. However, in view of the clear distinctions pointed out above, further discussion is believed to be unnecessary at this time. Failure to specifically address each point raised in the Office Action should accordingly not be viewed as accession to the Examiner's position or an admission of any sort.

Two minor typographical errors were noted in reviewing the present application and they are corrected by the present amendment. Clearly these amendments to the specification are very minor in nature and involve no new matter.

#### **Interview Request**

In view of this communication, all claims are now believed to be in condition for

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allowance and such is respectfully requested at an early date. If further matters remain to be resolved, the undersigned again respectfully requests the courtesy of an interview in order to expedite the present prosecution. The undersigned can be reached at the telephone number below.

Respectfully submitted,

/Jerry A. Miller 30779/

Jerry A. Miller  
Registration No. 30,779

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Please Send Correspondence to:  
Jerry A. Miller  
Miller Patent Services  
2500 Dockery Lane  
Raleigh, NC 27606  
Phone: (919) 816-9981  
Fax: (919) 816-9982  
**Customer Number 24337**

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